

111TH CONGRESS
1ST SESSION

H. R. 1039

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2009

Mr. SAM JOHNSON of Texas (for himself, Mr. BRADY of Texas, Ms. GINNY BROWN-WAITE of Florida, Mr. REICHERT, Mr. ROSKAM, and Mr. BOUSTANY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To encourage and enhance the adoption of interoperable health information technology to improve health care quality, reduce medical errors, and increase the efficiency of care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Promoting Health Information Technology Act of 2009”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STRATEGIC PLAN TOWARDS NATIONWIDE INTEROPERABILITY

Sec. 101. Office of the National Coordinator for Health Information Technology.

Sec. 102. Successor to the American Health Information Community.

Sec. 103. Health Information Technology Resource Center.

Sec. 104. Strategic plan for coordinating implementation of health information technology.

TITLE II—MODERNIZING THE HEALTH CARE DELIVERY SYSTEM

Sec. 201. Procedures to ensure timely updating of standards that enable electronic exchanges.

Sec. 202. Federal purchasing and data collection.

Sec. 203. Study to improve preservation and protection of security and confidentiality of health information.

TITLE III—INCENTIVIZING ADOPTION OF HEALTH IT

Sec. 301. Incentives for medical care providers to adopt health care information technology.

Sec. 302. Elimination of sunset applicable to Stark exception for electronic health records arrangements.

Sec. 303. Promotion of telehealth services.

Sec. 304. FQHCs included in electronic health records demonstration.

Sec. 305. Interest-free loan program for hospitals to adopt health information technology.

3 **TITLE I—STRATEGIC PLAN TO-** 4 **WARDS NATIONWIDE INTER-** 5 **OPERABILITY**

6 **SEC. 101. OFFICE OF THE NATIONAL COORDINATOR FOR** 7 **HEALTH INFORMATION TECHNOLOGY.**

8 (a) ESTABLISHMENT.—There is established within
 9 the Department of Health and Human Services an Office
 10 of the National Coordinator for Health Information Tech-
 11 nology that shall be headed by the National Coordinator
 12 for Health Information Technology (referred to in this

1 section as the “National Coordinator”). The National Co-
2 ordinator shall be appointed by the President and shall
3 report directly to the Secretary of Health and Human
4 Services. The National Coordinator shall be paid at a rate
5 equal to the rate of basic pay for level IV of the Executive
6 Schedule.

7 (b) GOALS OF NATIONWIDE INTEROPERABLE
8 HEALTH INFORMATION TECHNOLOGY INFRASTRUC-
9 TURE.—The National Coordinator shall perform the du-
10 ties under subsection (c) in a manner consistent with the
11 development of a nationwide interoperable health informa-
12 tion technology infrastructure that—

13 (1) improves health care quality, reduces med-
14 ical errors, increases the efficiency of care, and ad-
15 vances the delivery of appropriate, evidence-based
16 health care services;

17 (2) promotes wellness, disease prevention, and
18 management of chronic illnesses by increasing the
19 availability and transparency of information related
20 to the health care needs of an individual for such in-
21 dividual;

22 (3) ensures that appropriate information nec-
23 essary to make medical decisions is available in a us-
24 able form at the time and in the location that the
25 medical service involved is provided;

1 (4) produces greater value for health care ex-
2 penditures by reducing health care costs that result
3 from inefficiency, medical errors, inappropriate care,
4 and incomplete information;

5 (5) promotes a more effective marketplace,
6 greater competition, greater systems analysis, in-
7 creased choice, enhanced quality, and improved out-
8 comes in health care services;

9 (6) improves the coordination of information
10 and the provision of such services through an effec-
11 tive infrastructure for the secure and authorized ex-
12 change and use of health care information; and

13 (7) ensures that the confidentiality of individ-
14 ually identifiable health information of a patient is
15 secure and protected.

16 (c) DUTIES OF NATIONAL COORDINATOR.—

17 (1) STRATEGIC PLANNER FOR INTEROPERABLE
18 HEALTH INFORMATION TECHNOLOGY.—The Na-
19 tional Coordinator shall maintain, direct, and over-
20 see the continuous improvement of a strategic plan
21 to guide the nationwide implementation of interoper-
22 able health information technology in both the public
23 and private health care sectors consistent with sub-
24 section (b).

1 (2) PRINCIPAL ADVISOR TO HHS.—The Na-
2 tional Coordinator shall serve as the principal advi-
3 sor of the Secretary of Health and Human Services
4 on the development, application, and use of health
5 information technology, and coordinate the health
6 information technology programs of the Department
7 of Health and Human Services.

8 (3) COORDINATOR OF FEDERAL GOVERNMENT
9 ACTIVITIES.—

10 (A) IN GENERAL.—The National Coordi-
11 nator shall serve as the coordinator of Federal
12 Government activities relating to health infor-
13 mation technology.

14 (B) SPECIFIC COORDINATION FUNC-
15 TIONS.—In carrying out subparagraph (A), the
16 National Coordinator shall provide for—

17 (i) the approval of standards devel-
18 oped and recommended by AHIC 2.0
19 under section 102 (which may include
20 standards relating to the interoperability,
21 privacy, and security of health information
22 technology) to be used in the electronic
23 creation, maintenance, or exchange of
24 health information; and

1 (ii) the certification and inspection of
2 health information technology products, ex-
3 changes, and architectures to ensure that
4 such products, exchanges, and architec-
5 tures conform to the applicable standards
6 approved under clause (i).

7 Any standard approved or health information
8 technology product, exchange, or architecture
9 certified pursuant to Executive Order 13335 as
10 of the day before the date of the enactment of
11 this Act shall be deemed to be a standard ap-
12 proved or product, exchange, or architecture
13 certified, respectively, pursuant to this subpara-
14 graph as of such date of enactment.

15 (C) USE OF PRIVATE ENTITIES.—The Na-
16 tional Coordinator shall, to the maximum extent
17 possible, contract with or recognize private enti-
18 ties in carrying out subparagraph (B).

19 (D) UNIFORM APPLICATION OF STAND-
20 ARDS.—A standard approved under subpara-
21 graph (B)(i) for use in the electronic creation,
22 maintenance, or exchange of health information
23 shall preempt a standard adopted under State
24 law, regulation, or rule for such a use.

1 (4) INTRAGOVERNMENTAL COORDINATOR.—The
2 National Coordinator shall ensure that health infor-
3 mation technology policies and programs of the De-
4 partment of Health and Human Services are coordi-
5 nated with those of relevant executive branch agen-
6 cies and departments with a goal to avoid duplica-
7 tion of effort and to ensure that each agency or de-
8 partment conducts programs within the areas of its
9 greatest expertise and its mission in order to create
10 a national interoperable health information system
11 capable of meeting national public health needs ef-
12 fectively and efficiently.

13 (5) ADVISOR TO OMB.—The National Coordi-
14 nator shall provide to the Director of the Office of
15 Management and Budget comments and advice with
16 respect to specific Federal health information tech-
17 nology programs.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated such sums as may be
20 necessary to carry out this section for each of fiscal years
21 2009 through 2013.

22 (e) TREATMENT OF EXECUTIVE ORDER 13335.—Ex-
23 ecutive Order 13335 shall not have any force or effect
24 after the date of the enactment of this Act.

1 (f) TRANSITION FROM ONCHIT UNDER EXECUTIVE
2 ORDER.—

3 (1) IN GENERAL.—All functions, personnel, as-
4 sets, liabilities, administrative actions, and statutory
5 reporting requirements applicable to the old Na-
6 tional Coordinator or the Office of the old National
7 Coordinator on the date before the date of the enact-
8 ment of this Act shall be transferred, and applied in
9 the same manner and under the same terms and
10 conditions, to the new National Coordinator and the
11 Office of the new National Coordinator as of the
12 date of the enactment of this Act.

13 (2) ACTING NATIONAL COORDINATOR.—Before
14 the appointment of the new National Coordinator,
15 the old National Coordinator shall act as the Na-
16 tional Coordinator for Health Information Tech-
17 nology until the office is filled as provided in sub-
18 section (a). The President may appoint the old Na-
19 tional Coordinator as the new National Coordinator.

20 (3) DEFINITIONS.—For purposes of this sub-
21 section:

22 (A) NEW NATIONAL COORDINATOR.—The
23 term “new National Coordinator” means the
24 National Coordinator for Health Information
25 Technology appointed under subsection (a).

1 (B) OLD NATIONAL COORDINATOR.—The
2 term “old National Coordinator” means the
3 National Coordinator for Health Information
4 Technology appointed under Executive Order
5 13335.

6 **SEC. 102. SUCCESSOR TO THE AMERICAN HEALTH INFOR-**
7 **MATION COMMUNITY.**

8 (a) IN GENERAL.—The Secretary of Health and
9 Human Services shall (through a grant, contract, or coop-
10 erative agreement) ensure the establishment and provide
11 for the operation of an entity described in subsection (b)
12 (in this Act to be referred to as “AHIC 2.0”) for purposes
13 of developing and recommending standards described in
14 section 101(c)(3)(B)(i) for approval under such section.

15 (b) STRUCTURE AND PROCEDURES OF ENTITY.—An
16 entity described in this subsection is an entity—

17 (1) in the operation of which there is broad par-
18 ticipation by a variety of public and private stake-
19 holders, (whether through membership or through
20 other means);

21 (2) that uses a consensus approach and a fair
22 and open process to support the development of
23 standards under subsection (a); and

24 (3) that has a business plan and a published set
25 of governance rules that enables the entity to be

1 self-sustaining and to fulfill the purposes described
2 in subsection (a).

3 (c) CONSULTATION.—In establishing AHIC 2.0, the
4 entity awarded a grant, contract, or cooperative agreement
5 pursuant to subsection (a), shall consult with a wide vari-
6 ety of private and public stakeholders that are knowledge-
7 able with respect to standards to be developed by AHIC
8 2.0 or that would be potentially affected by the rec-
9 ommendations of AHIC 2.0.

10 (d) FUNDING.—

11 (1) AUTHORIZATION OF APPROPRIATIONS.—

12 There are authorized to be appropriated to carry out
13 this section \$13,000,000, to remain available until
14 expended.

15 (2) FURTHER FEDERAL FUNDING OTHER THAN

16 DUES PROHIBITED.—Except as otherwise provided
17 by this subsection, and except for such dues as may
18 be paid by a Federal agency for membership or
19 other participation in AHIC 2.0, no Federal agency
20 may provide funding to the entity. There are author-
21 ized to be appropriated to such agencies such
22 amounts as are necessary to pay the dues described
23 in the previous sentence.

24 (e) NONDUPLICATION OF EFFORTS TO ESTABLISH
25 AHIC 2.0.—Nothing in this section shall be construed as

1 requiring the duplication of Federal efforts (such as
2 awarding a grant, contract, or cooperative agreement)
3 that were carried out before the date of the enactment
4 of this Act, with respect to the establishment of an entity
5 to support the development and recommendation of stand-
6 ards under subsection (a).

7 (f) TREATMENT OF STANDARDS DEVELOPED OR AP-
8 PROVED BY AHIC.—For purposes of this title, a standard
9 developed or approved (or in a stage of development or
10 approval) by the American Health Information Commu-
11 nity established pursuant to Executive Order 13335 (or
12 the AHIC Successor, Inc. doing business as the National
13 eHealth Collaborative) as of the day before the date of
14 the enactment of this Act shall be deemed to be a standard
15 developed or approved, respectively, (or in such stage of
16 development or approval) by AHIC 2.0 as of such date
17 of enactment.

18 **SEC. 103. HEALTH INFORMATION TECHNOLOGY RESOURCE**
19 **CENTER.**

20 (a) IN GENERAL.—There is established within the
21 Office of the National Coordinator for Health Information
22 Technology the Health Information Technology Resource
23 Center (referred to in this section as the “Center”) to
24 carry out the following functions:

1 (1) Provide assistance and support for adoption
2 and implementation efforts and effective use of
3 interoperable health information technology.

4 (2) Serve as a forum for the exchange of knowl-
5 edge and experience.

6 (3) Accelerate the transmission of knowledge
7 from existing health information initiatives in both
8 the private and public sectors.

9 (4) Support the establishment of regional and
10 local health information networks to facilitate the
11 interoperability of health care data across health
12 care settings.

13 (5) Develop solutions to barriers to electronic
14 health information exchange.

15 (6) Provide technical assistance and tools to
16 help health information exchanges develop a path to-
17 ward financial sustainability.

18 (7) Establish a longitudinal database to meas-
19 ure the business sustainability of health information
20 exchange and evaluate the impact of health informa-
21 tion exchange on community health outcomes and
22 value.

23 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
24 tion shall be construed to require the duplication of Fed-
25 eral efforts with respect to the establishment of the Cen-

1 ter, regardless of whether such efforts were carried out
 2 prior to or after the enactment of this subsection.

3 (c) TRANSITION FROM NATIONAL RESOURCE CEN-
 4 TER FOR HEALTH INFORMATION TECHNOLOGY UNDER
 5 AHRQ.—All functions, personnel, assets, and liabilities
 6 applicable to the National Resource Center for Health In-
 7 formation Technology under the Agency for Healthcare
 8 Research and Quality as of the day before the date of the
 9 enactment of this Act shall be transferred, and applied
 10 in the same manner and under the same terms and condi-
 11 tions, to the Health Information Technology Resource
 12 Center under the Office of the National Coordinator for
 13 Health Information Technology established under sub-
 14 section (a) as of the date of the enactment of this Act.

15 **SEC. 104. STRATEGIC PLAN FOR COORDINATING IMPLE-**
 16 **MENTATION OF HEALTH INFORMATION**
 17 **TECHNOLOGY.**

18 (a) IN GENERAL.—Not later than 180 days after the
 19 date of the enactment of this Act, the Secretary of Health
 20 and Human Services, in consultation with entities involved
 21 in the area of health information technology, shall develop
 22 a strategic plan related to the need for coordination in
 23 such area.

24 (b) COORDINATION OF SPECIFIC IMPLEMENTATION
 25 PROCESSES.—The strategic plan under subsection (a)

1 shall address the need for coordination in the implementa-
2 tion of the following:

3 (1) HEALTH INFORMATION TECHNOLOGY
4 STANDARDS.—Health information technology stand-
5 ards approved under section 101(c)(3)(B)(i).

6 (2) HIPAA TRANSACTION STANDARDS.—Trans-
7 action standards under section 1173(a) of the Social
8 Security Act (42 U.S.C. 1320d–2(d)).

9 (c) COORDINATION AMONG SPECIFIC FEDERAL EN-
10 TITIES.—The strategic plan under subsection (a) shall ad-
11 dress any methods to coordinate, with respect to the elec-
12 tronic exchange of health information, actions taken by
13 the following entities:

14 (1) The Office of the National Coordinator for
15 Health Information Technology.

16 (2) AHIC 2.0 established under section 102.

17 (3) The Office of Electronic Standards and Se-
18 curity of the Centers for Medicare and Medicaid
19 Services.

20 (4) The National Committee on Vital Health
21 Statistics.

22 (5) Any other entity involved in the electronic
23 exchange of health information that the Secretary
24 determines appropriate.

1 **TITLE II—MODERNIZING THE**
2 **HEALTH CARE DELIVERY SYS-**
3 **TEM**

4 **SEC. 201. PROCEDURES TO ENSURE TIMELY UPDATING OF**
5 **STANDARDS THAT ENABLE ELECTRONIC EX-**
6 **CHANGES.**

7 Section 1174(b) of the Social Security Act (42 U.S.C.
8 1320d–3(b)) is amended—

9 (1) in paragraph (1)—

10 (A) in the first sentence, by inserting “and
11 in accordance with paragraph (3)” before the
12 period; and

13 (B) by adding at the end the following new
14 sentence: “For purposes of this subsection and
15 section 1173(c)(2), the term ‘modification’ in-
16 cludes a new version or a version upgrade.”;
17 and

18 (2) by adding at the end the following new
19 paragraph:

20 “(3) **EXPEDITED PROCEDURES FOR ADOPTION**
21 **OF ADDITIONS AND MODIFICATIONS TO STAND-**
22 **ARDS.—**

23 “(A) **IN GENERAL.—**For purposes of para-
24 graph (1), the Secretary shall provide for an ex-
25 pedited upgrade program (in this paragraph re-

ferred to as the ‘upgrade program’), in accordance with this paragraph, to develop and approve additions and modifications to the standards adopted under section 1173(a) to improve the quality of such standards or to extend the functionality of such standards to meet evolving requirements in health care.

“(B) PUBLICATION OF NOTICES.—Under the upgrade program:

“(i) VOLUNTARY NOTICE OF INITIATION OF PROCESS.—Not later than 30 days after the date the Secretary receives a notice from a standard setting organization that the organization is initiating a process to develop an addition or modification to a standard adopted under section 1173(a), the Secretary shall publish a notice in the Federal Register that—

“(I) identifies the subject matter of the addition or modification;

“(II) provides a description of how persons may participate in the development process; and

“(III) invites public participation in such process.

1 “(ii) VOLUNTARY NOTICE OF PRE-
2 LIMINARY DRAFT OF ADDITIONS OR MODI-
3 FICATIONS TO STANDARDS.—Not later
4 than 30 days after the date the Secretary
5 receives a notice from a standard setting
6 organization that the organization has pre-
7 pared a preliminary draft of an addition or
8 modification to a standard adopted by sec-
9 tion 1173(a), the Secretary shall publish a
10 notice in the Federal Register that—

11 “(I) identifies the subject matter
12 of (and summarizes) the addition or
13 modification;

14 “(II) specifies the procedure for
15 obtaining the draft;

16 “(III) provides a description of
17 how persons may submit comments in
18 writing and at any public hearing or
19 meeting held by the organization on
20 the addition or modification; and

21 “(IV) invites submission of such
22 comments and participation in such
23 hearing or meeting without requiring
24 the public to pay a fee to participate.

1 “(iii) NOTICE OF PROPOSED ADDITION
2 OR MODIFICATION TO STANDARDS.—Not
3 later than 30 days after the date the Sec-
4 retary receives a notice from a standard
5 setting organization that the organization
6 has a proposed addition or modification to
7 a standard adopted under section 1173(a)
8 that the organization intends to submit
9 under subparagraph (D)(iii), the Secretary
10 shall publish a notice in the Federal Reg-
11 ister that contains, with respect to the pro-
12 posed addition or modification, the infor-
13 mation required in the notice under clause
14 (ii) with respect to the addition or modi-
15 fication.

16 “(iv) CONSTRUCTION.—Nothing in
17 this paragraph shall be construed as re-
18 quiring a standard setting organization to
19 request the notices described in clauses (i)
20 and (ii) with respect to an addition or
21 modification to a standard in order to
22 qualify for an expedited determination
23 under subparagraph (C) with respect to a
24 proposal submitted to the Secretary for
25 adoption of such addition or modification.

1 “(C) PROVISION OF EXPEDITED DETER-
2 MINATION.—Under the upgrade program and
3 with respect to a proposal by a standard setting
4 organization for an addition or modification to
5 a standard adopted under section 1173(a), if
6 the Secretary determines that the standard set-
7 ting organization developed such addition or
8 modification in accordance with the require-
9 ments of subparagraph (D) and the National
10 Committee on Vital and Health Statistics rec-
11 ommends approval of such addition or modifica-
12 tion under subparagraph (E), the Secretary
13 shall provide for expedited treatment of such
14 proposal in accordance with subparagraph (F).

15 “(D) REQUIREMENTS.—The requirements
16 under this subparagraph with respect to a pro-
17 posed addition or modification to a standard by
18 a standard setting organization are the fol-
19 lowing:

20 “(i) REQUEST FOR PUBLICATION OF
21 NOTICE.—The standard setting organiza-
22 tion submits to the Secretary a request for
23 publication in the Federal Register of a no-
24 tice described in subparagraph (B)(iii) for
25 the proposed addition or modification.

1 “(ii) PROCESS FOR RECEIPT AND
2 CONSIDERATION OF PUBLIC COMMENT.—

3 The standard setting organization provides
4 for a process through which, after the pub-
5 lication of the notice referred to under
6 clause (i), the organization—

7 “(I) receives and responds to
8 public comments submitted on a time-
9 ly basis on the proposed addition or
10 modification before submitting such
11 proposed addition or modification to
12 the National Committee on Vital and
13 Health Statistics under clause (iii);

14 “(II) makes publicly available a
15 written explanation for its response in
16 the proposed addition or modification
17 to comments submitted on a timely
18 basis; and

19 “(III) makes public comments re-
20 ceived under clause (I) available, or
21 provides access to such comments, to
22 the Secretary.

23 “(iii) SUBMITTAL OF FINAL PRO-
24 POSED ADDITION OR MODIFICATION TO
25 NCVHS.—After completion of the process

1 under clause (ii), the standard setting or-
2 ganization submits the proposed addition
3 or modification to the National Committee
4 on Vital and Health Statistics for review
5 and consideration under subparagraph (E).
6 Such submission shall include information
7 on the organization's compliance with the
8 notice and comment requirements (and re-
9 sponses to those comments) under clause
10 (ii).

11 “(E) HEARING AND RECOMMENDATIONS
12 BY NATIONAL COMMITTEE ON VITAL AND
13 HEALTH STATISTICS.—Under the upgrade pro-
14 gram, upon receipt of a proposal submitted by
15 a standard setting organization under subpara-
16 graph (D)(iii) for the adoption of an addition or
17 modification to a standard, the National Com-
18 mittee on Vital and Health Statistics shall pro-
19 vide notice to the public and a reasonable op-
20 portunity for public testimony at a hearing on
21 such addition or modification. The Secretary
22 may participate in such hearing in such capac-
23 ity (including presiding ex officio) as the Sec-
24 retary shall determine appropriate. Not later
25 than 90 days after the date of receipt of the

1 proposal, the Committee shall submit to the
2 Secretary its recommendation to adopt (or not
3 adopt) the proposed addition or modification.

4 “(F) DETERMINATION BY SECRETARY TO
5 ACCEPT OR REJECT NATIONAL COMMITTEE ON
6 VITAL AND HEALTH STATISTICS RECOMMENDA-
7 TION.—

8 “(i) TIMELY DETERMINATION.—

9 Under the upgrade program, if the Na-
10 tional Committee on Vital and Health Sta-
11 tistics submits to the Secretary a rec-
12 ommendation under subparagraph (E) to
13 adopt a proposed addition or modification,
14 not later than 90 days after the date of re-
15 ceipt of such recommendation the Sec-
16 retary shall make a determination to ac-
17 cept or reject the recommendation and
18 shall publish notice of such determination
19 in the Federal Register not later than 30
20 days after the date of the determination.

21 “(ii) CONTENTS OF NOTICE.—If the
22 determination is to reject the recommenda-
23 tion, such notice shall include the reasons
24 for the rejection. If the determination is to
25 accept the recommendation, as part of

such notice the Secretary shall promulgate the modified standard (including the accepted proposed addition or modification accepted).

“(iii) LIMITATION ON CONSIDERATION.—The Secretary shall not consider a proposal under this subparagraph unless the Secretary determines that the requirements of subparagraph (D) (including publication of notice and opportunity for public comment) have been met with respect to the proposal.

“(G) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code, shall not apply to a final rule promulgated under subparagraph (F).”.

SEC. 202. FEDERAL PURCHASING AND DATA COLLECTION.

(a) COORDINATION OF FEDERAL SPENDING.—

(1) IN GENERAL.—Subject to section 203(c), not later than 1 year after the date of the approval of an applicable standard under section 101(c)(3)(B)(i), no Federal funds may be used for the purchase of any health information technology or health information technology system for clinical care or for the electronic retrieval, storage, or ex-

1 change of health information unless such technology
2 or system has been certified under section
3 101(c)(3)(B)(ii) with respect to compliance with
4 such standard.

5 (2) RULE OF CONSTRUCTION.—Nothing in
6 paragraph (1) shall be construed to restrict the pur-
7 chase of minor (as determined by the Secretary)
8 hardware or software components in order to mod-
9 ify, correct a deficiency in, or extend the life of exist-
10 ing hardware or software.

11 (b) COORDINATION OF FEDERAL DATA COLLEC-
12 TION.—Subject to section 203(c), not later than 3 years
13 after the date of the approval of an applicable standard
14 under section 101(c)(3)(B)(i), all Federal agencies col-
15 lecting health data in an electronic format for the pur-
16 poses of quality reporting, surveillance, epidemiology, ad-
17 verse event reporting, research, or for other purposes de-
18 termined appropriate by the Secretary of Health and
19 Human Services, shall comply with such standard.

20 **SEC. 203. STUDY TO IMPROVE PRESERVATION AND PRO-**
21 **TECTION OF SECURITY AND CONFIDEN-**
22 **TIALITY OF HEALTH INFORMATION.**

23 (a) IN GENERAL.—The Secretary of Health and
24 Human Services shall conduct a study of current Federal
25 security and confidentiality standards to determine the

1 strengths and weaknesses of such standards for purposes
2 of protecting the security and confidentiality of individ-
3 ually identifiable health information while taking into ac-
4 count the need for timely and efficient exchanges of health
5 information to improve quality of care and ensure the
6 availability of health information necessary to make med-
7 ical decisions at the location in which the medical care in-
8 volved is provided.

9 (b) REPORT.—Not later than 24 months after the
10 date of the enactment of this Act, the Secretary of Health
11 and Human Services shall submit to Congress a report
12 on the study under subsection (a) and shall include in such
13 report recommendations for improving the current Federal
14 security and confidentiality standards, including rec-
15 ommendations for a mechanism to track breaches to the
16 security or confidentiality of individually identifiable
17 health information and for appropriate penalties to apply
18 in the case of such a breach.

19 (c) PRESERVATION OF CURRENT SECURITY AND
20 CONFIDENTIALITY STANDARDS BEFORE SUBMITTAL OF
21 REPORT.—None of the provisions of this Act or amend-
22 ments made by this Act may limit, or require issuance of
23 a regulation that would limit, the effect of a current Fed-
24 eral security and confidentiality standard before the date
25 of the submittal of the report under subsection (b).

1 (d) CURRENT FEDERAL SECURITY AND CONFIDEN-
 2 TIALITY STANDARDS DEFINED.—For purposes of this sec-
 3 tion, the term “current Federal security and confiden-
 4 tiality standards” means the Federal privacy standards es-
 5 tablished pursuant to section 264(c) of the Health Insur-
 6 ance Portability and Accountability Act of 1996 (42
 7 U.S.C. 1320d–2 note) and security standards established
 8 under section 1173(d) of the Social Security Act.

9 **TITLE III—INCENTIVIZING** 10 **ADOPTION OF HEALTH IT**

11 **SEC. 301. INCENTIVES FOR MEDICAL CARE PROVIDERS TO** 12 **ADOPT HEALTH CARE INFORMATION TECH-** 13 **NOLOGY.**

14 (a) IN GENERAL.—Subsection (b) of section 179 of
 15 the Internal Revenue Code of 1986 is amended by adding
 16 at the end the following new paragraph:

17 “(8) INCREASED LIMITATION FOR HEALTH
 18 CARE INFORMATION TECHNOLOGY.—

19 “(A) IN GENERAL.—In the case of a med-
 20 ical care provider for any taxable year begin-
 21 ning after December 31, 2008, and before Jan-
 22 uary 1, 2014—

23 “(i) the dollar amount in effect under
 24 paragraph (1) shall be increased by the
 25 lesser of—

1 “(I) \$250,000, or

2 “(II) the cost of qualified health
3 care information technology placed in
4 service by such provider during the
5 taxable year, and

6 “(ii) the dollar amount in effect under
7 paragraph (2) shall be increased by the
8 lesser of—

9 “(I) \$800,000, or

10 “(II) the cost of qualified health
11 care information technology placed in
12 service by such provider during the
13 taxable year.

14 “(B) DEFINITIONS.—For purposes of this
15 subsection—

16 “(i) QUALIFIED HEALTH CARE INFOR-
17 MATION TECHNOLOGY.—The term ‘quali-
18 fied health care information technology’
19 means section 179 property which—

20 “(I) has been certified pursuant
21 to section 101(c)(3)(B)(ii) of the Pro-
22 moting Health Information Tech-
23 nology Act of 2009, and

24 “(II) is used primarily for the
25 electronic creation, maintenance, and

1 exchange of medical care information
 2 to improve the quality or efficiency of
 3 medical care.

4 “(ii) MEDICAL CARE PROVIDER.—The
 5 term ‘medical care provider’ means any
 6 person engaged in the trade or business of
 7 providing medical care.

8 “(iii) MEDICAL CARE.—The term
 9 ‘medical care’ has the meaning given such
 10 term by section 213(d).”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to property placed in service after
 13 December 31, 2008.

14 **SEC. 302. ELIMINATION OF SUNSET APPLICABLE TO STARK**
 15 **EXCEPTION FOR ELECTRONIC HEALTH**
 16 **RECORDS ARRANGEMENTS.**

17 In applying section 1877(e) of the Social Security Act
 18 (42 U.S.C. 1395(e)), with respect to a regulation imple-
 19 menting such section by providing an exception to the pro-
 20 hibition against making certain physician referrals in the
 21 case of the offering or payment of nonmonetary remunera-
 22 tion (consisting of items and services in the form of soft-
 23 ware or information technology and training services) nec-
 24 essary and used predominantly to create, maintain, trans-
 25 mit, or receive electronic health records, the Secretary of

1 Health and Human Services shall not limit the period in
2 which such an exception under such a regulation applies.

3 **SEC. 303. PROMOTION OF TELEHEALTH SERVICES.**

4 (a) FACILITATING THE PROVISION OF TELEHEALTH
5 SERVICES ACROSS STATE LINES.—

6 (1) IN GENERAL.—The Secretary of Health and
7 Human Services shall, in coordination with physi-
8 cians, health care practitioners, patient advocates,
9 and representatives of States, encourage and facili-
10 tate the adoption of State reciprocity agreements for
11 practitioner licensure in order to expedite the provi-
12 sion across State lines of telehealth services.

13 (2) REPORT.—Not later than 18 months after
14 the date of the enactment of this Act, the Secretary
15 of Health and Human Services shall submit to Con-
16 gress a report on the actions taken to carry out
17 paragraph (1).

18 (3) STATE DEFINED.—For purposes of this
19 subsection, the term “State” has the meaning given
20 that term for purposes of title XVIII of the Social
21 Security Act.

22 (b) STUDY AND REPORT ON EXPANSION OF HOME
23 HEALTH-RELATED TELEHEALTH SERVICES.—

1 (1) STUDY.—The Secretary of Health and
2 Human Services shall conduct a study to determine
3 the feasibility, advisability, and the costs of—

4 (A) including coverage and payment for
5 home health-related telehealth services as part
6 of home health services under title XVIII of the
7 Social Security Act; and

8 (B) expanding the list of sites described in
9 paragraph (4)(C)(ii) of section 1834(m) of the
10 Social Security Act (42 U.S.C. 1395m(m)) to
11 include county mental health clinics or other
12 publicly funded mental health facilities for the
13 purpose of payment under such section for the
14 provision of telehealth services at such clinics or
15 facilities.

16 (2) SPECIFICS OF STUDY.—Such study shall
17 demonstrate whether the changes described in sub-
18 paragraphs (A) and (B) of paragraph (1) are likely
19 to result in the following:

20 (A) Enhanced health outcomes for individ-
21 uals with one or more chronic conditions.

22 (B) Health outcomes for individuals fur-
23 nished telehealth services or home health-re-
24 lated telehealth services that are at least com-
25 parable to the health outcomes for individuals

1 furnished similar items and services by a health
2 care provider at the same location of the indi-
3 vidual or at the home of the individual, respec-
4 tively.

5 (C) Facilitation of communication of more
6 accurate clinical information between health
7 care providers.

8 (D) Closer monitoring of individuals by
9 health care providers.

10 (E) Overall reduction in expenditures for
11 health care items and services.

12 (F) Improved access to health care.

13 (3) HOME HEALTH-RELATED TELEHEALTH
14 SERVICES DEFINED.—For purposes of this sub-
15 section, the term “home health-related telehealth
16 services” means technology-based professional con-
17 sultations, patient monitoring, patient training serv-
18 ices, clinical observation, patient assessment, and
19 any other health services that utilize telecommuni-
20 cations technologies. Such term does not include a
21 telecommunication that consists solely of a telephone
22 audio conversation, facsimile, electronic text mail, or
23 consultation between two health care providers.

24 (4) REPORT.—Not later than 18 months after
25 the date of the enactment of this Act, the Secretary

1 of Health and Human Services shall submit to Con-
2 gress a report on the study conducted under para-
3 graph (1) and shall include in such report such rec-
4 ommendations for legislation or administration ac-
5 tion as the Secretary determines appropriate.

6 (c) STUDY AND REPORT ON STORE AND FORWARD
7 TECHNOLOGY FOR TELEHEALTH.—

8 (1) STUDY.—The Secretary of Health and
9 Human Services, acting through the Director of the
10 Office for the Advancement of Telehealth, shall con-
11 duct a study on the use of store and forward tech-
12 nologies (that provide for the asynchronous trans-
13 mission of health care information in single or multi-
14 media formats) in the provision of telehealth serv-
15 ices. Such study shall include an assessment of the
16 feasibility, advisability, and the costs of expanding
17 the use of such technologies for use in the diagnosis
18 and treatment of certain health conditions, as speci-
19 fied by the Secretary.

20 (2) REPORT.—Not later than 18 months after
21 the date of the enactment of this Act, the Secretary
22 of Health and Human Services shall submit to Con-
23 gress a report on the study conducted under para-
24 graph (1) and shall include in such report such rec-

1 commendations for legislation or administration ac-
2 tion as the Secretary determines appropriate.

3 **SEC. 304. FQHCS INCLUDED IN ELECTRONIC HEALTH**
4 **RECORDS DEMONSTRATION.**

5 Effective as of the date of the enactment of this Act,
6 in developing and implementing a demonstration initiative
7 to foster the implementation and adoption of electronic
8 health records and health information technology, the
9 Centers of Medicare & Medicaid Services shall provide for
10 the eligibility of Federally qualified health centers (as de-
11 fined in section 1861(aa)(4) of the Social Security Act (42
12 U.S.C. 1395x(aa)(4)) to participate in such demonstra-
13 tion.

14 **SEC. 305. INTEREST-FREE LOAN PROGRAM FOR HOSPITALS**
15 **TO ADOPT HEALTH INFORMATION TECH-**
16 **NOLOGY.**

17 (a) IN GENERAL.—The Secretary of Health and
18 Human Services (in this section referred to as the “Sec-
19 retary”) shall establish a loan program that provides loans
20 to hospitals to purchase and implement health information
21 technology products certified pursuant to section
22 101(c)(3)(B)(ii).

23 (b) APPLICATION.—No loan may be provided under
24 this section to a hospital except pursuant to an application
25 that is submitted and approved in a time, manner, and

1 form specified by the Secretary. A loan under this section
2 shall be on such terms and conditions and meet such re-
3 quirements as the Secretary determines appropriate, in ac-
4 cordance with the provisions of this section.

5 (c) PERMISSIBLE USE OF LOAN FUNDS.—A loan
6 provided under this section shall be used only for the pur-
7 chase and implementation of health information tech-
8 nology products certified pursuant to section
9 1019c)(3)(B)(ii).

10 (d) PREFERENCE.—In making loans under this sec-
11 tion, the Secretary shall give preference to any applicant
12 for such a loan that is a hospital receiving a high amount
13 of disproportionate share hospital payments under section
14 1886(d)(5)(F) of the Social Security Act (42 U.S.C.
15 1395ww(d)(5)(F)).

16 (e) REPAYMENT OF LOANS.—The Secretary shall es-
17 tablish a schedule for the repayment of loans provided
18 under this section.

19 (f) NO INTEREST CHARGED.—The Secretary shall
20 not charge or collect interest on any loan made under this
21 section.

22 (g) PENALTIES.—The Secretary shall establish pen-
23 alties to which a hospital receiving a loan under this sec-
24 tion would be subject if such hospital is in violation of

1 any of the terms, conditions, or requirements specified by
2 the Secretary under subsection (b) or under this section.

3 (h) FUNDING.—

4 (1) AUTHORIZATION OF APPROPRIATIONS.—For
5 purposes of carrying out this section, there are au-
6 thorized to be appropriated such sums as may be
7 necessary for fiscal year 2009 and each succeeding
8 fiscal year.

9 (2) AVAILABILITY.—Amounts appropriated
10 under paragraph (1) shall remain available until ex-
11 pended.

12 (3) REPAID LOAN AMOUNTS.—Any amount re-
13 paid by, or recovered from, a hospital under this sec-
14 tion shall be credited to the appropriation account
15 from which the loan amount involved was originally
16 paid. Any amount so credited shall be available only
17 for the purpose of carrying out the loan program
18 under this section.

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